illumined by the genius, the patriotism and learning of her sons, like Cornelia, the mother of the Gracchi, when she counts her jewels, will point to Spencer Roane as one of the choicest in her crown, and his name as one of the brightest constellations in her judicial firmament.

"His spirit wraps the dusky mountain,
His memory sparkles o'er the fountain,
The meanest rill, the mightiest river,
Rolls mingling with his fame forever."

T. R. B. WRIGHT.

Tappahannock, Va.

MECHANICS' LIENS.

ORIGIN AND DEVELOPMENT OF THE LIEN.

The Mechanics' Lien is purely a creation of Statute; it had no existence at common law, and, independently of statute, is unknown in equity. Common law liens were inseparably connected with the possession of the subject of the lien, and were lost when the possession of the specific article on which the lien was claimed passed from the lien creditor. The common law lien recognized the right of the creditor to retain the possession of the article, created or enhanced in value by his labor, till the compensation due for his labor thereon was paid. As his labor, under contract with the owner of the chattel, had gone into the chattel, and of course could not be separated therefrom, the workman was permitted to retain possession of the finished article till he was paid for the labor that had become inseparably a part of it.

A development of this common law lien, by which the workman was permitted to retain possession of the chattel, which had been increased in value by his labor and his material, has produced statutes providing for mechanics' liens in forty-five of our States and Territories and in the District of Columbia. If the workman was permitted to follow his labor and his material into the chattel that they had created, or had given value to, why should not the workman and the material man be permitted to follow their labor and their supplies into the buildings and structures, which owed their value to the industry and the material that had created the buildings and structures? If the workman might retain possession of the chattel, and so give notice

to the world of his claim, preventing frauds and deceptions on purchasers and creditors, could not the resources of the law devise some method as to a subject-matter not admitting of possession, by which notice of the lien might be given to the world, and thus prevent frauds on purchasers and creditors?

If the increased value of the chattel by reason of the labor bestowed upon it; the fact that the loss of his earnings would be a greater hardship on the workman than a similar loss to other members of the community, together with the benefit conferred by his labor in increasing the resources of the country, entitled the man doing labor on, or furnishing material for chattels, to a peculiar security not given other classes of citizens, why should not the same considerations provide a lien for workmen whose labor and material went into buildings and other structures, so essential to the development of a new country? These considerations would not appeal so strongly to an old and fully-developed country, and consequently there is no mechanics' lien known to the laws of England to-day. Whilst, that such a policy is suited to the needs of our own country, is shown by its very general adoption and retention here.

The statutes of the various States and Territories will be found similar in many respects, though differing widely in detail. The courts in construing them have entertained very different views as to their policy. One line of decisions will be found to construe them liberally, and to extend the remedy to all cases that could be brought within the spirit of the Act, whilst another line of well-considered decisions will be found to require an almost literal compliance with the requirements of the statute, as a condition of securing the benefit of the lien they provide. An examination of the adjudged cases will show that, as a general rule, where the statutes have been just, and have respected the rights of the owner, purchasers and creditors, the courts have extended the remedy wherever the claimant has shown a substantial compliance with the statutory requirements, whilst on the other hand, when the interests of the workman and material man alone were considered, without regard to the hardship inflicted on the owner or creditors or purchasers for value and without notice, the courts have restricted the application of the law, by requiring a compliance with the strict letter of the statutes, and have been astute to discover reasons for refusing to grant the remedy provided. This has been notably the case where the sub-contractor or material man was given a lien, without regard to the standing of the accounts between the owner and the

general contractor, or when they and the general contractor were allowed a long period after the completion of the building in which to perfect their liens. Such statutes have resulted in compelling the owner to pay for his house a second time to the laborers and supply men, after having paid the contractor in full, and have as frequently necessitated the payment by purchasers and deed of trust creditors of liens taken out on the property, long after its completion, and subsequent to its sale or encumbrance. Expressions of the courts in the consideration of statutes of the latter class will be frequently found to have no application whatever to those statutes affording adequate protection to owners, other lien creditors and purchasers.*

HISTORY OF THE MECHANICS' LIEN IN VIRGINIA.

The mechanics' lien in Virginia had its origin in the Act of February 21, 1843. See Acts 1842–3, page 52. We note, in reference to this Act: (1) The lien was only given when the contract under which the work was done was in writing. (2) Such writing must be recorded in the clerk's office of the county or corporation in which "such lot, house or other building" may be. (3) The lien was given for both building and repairs. (4) The lien was only given as against "the proprietors of any lot, house or other building, in any *city, borough or town.*" No lien was given against country property. (5) The lien was in favor of the contractor, and persons who furnished labor or materials. (6) There was no limitation as to time in perfecting the lien, save (7) The suit to enforce the lien must be brought within eight months from the time the last installment due for labor and material was payable. (8) The lien might be enforced by a suit in equity, in which suit the court might adjust the rights of all persons having liens upon the property; might allow compensation to the owner for defective performance of the contract, and enforce the lien for the remainder due. This Act was speedily shorn of many of its provisions, and the mechanics' lien law in Virginia is included in a single section of the Code of 1849 (see page 510), and, in striking contrast with the work of the lightning-change artists of our recent legislatures, this law appears unchanged in the Code of 1860 (see page 567). An examination of the law as it then stood shows: (1) It only provided for a lien upon property in a city or town. (2) The contract must be in writing. (3) The lien existed only from the time the written contract

* Since writing this article I have seen the opinion of Keith, P., in *Bristol Iron & Steel Co. v. Thomas*, 25 S. E. Rep. 110, where, at p. 112, the learned Judge considers this subject and vindicates the conclusion reached herein.

was recorded. (4) The lien did not remain in force more than six months, unless suit was brought in that time to enforce it. (5) If the lien were established, the court must order a sale of the whole interest in the land of the person signing the contract.

The mechanics' lien law, as contained in chapter 115 of the Code of 1873, showed many and important changes. Whilst section 2 still only provided for a lien where there was a written contract signed by the owner, section 3 required no written contract in order to obtain the benefit of the lien contemplated thereby, but provided that "all artizans, builders, mechanics, lumber dealers, and others performing labor or furnishing materials for the construction, repair or improvement of any building or other property, shall have a lien as hereinafter provided. . . . . ." But no lien was "hereinafter provided" save for the general contractor. For, section 4, which contained the only provision for perfecting liens, only provided a method for the general contractor's perfecting his lien. Nowhere in the chapter was any method provided for the sub-contractor's perfecting the lien, which section 3 evidently contemplated he should have. This omission was rectified by chapter 351 of the Acts of 1874–5, which made the same provisions for sub-contractors and material men perfecting their liens that it made for the general contractor.

The sub-contractor was now abundantly protected: (1) He might take out his lien on the building, or (2), by giving the notices provided for in section 5, as amended by chapter 351 of Acts 1874–5, he might render the owner personally liable for his debt, and in either case without regard to the fact that the owner might have paid the general contractor in full without knowledge of the sub-contractor's debt—*S. V. R. R. Co. v. Miller*, 80 Va. 821; *Roanake L. & I. Co. v. Karn & Hickson*, 80 Va. 589; *N. & W. R. R. Co. v. Howison*, 81 Va. 125—or (3), he might obtain the benefit as to his debt of any lien taken out by the general contractor.

The period for the taking out of the general contractor's lien, fixed at thirty days in the Code of 1873, was extended by the Acts of 1878–9, chapter 58, to sixty days, and by the Acts of 1879–80, chapter 54, to ninety days, whilst the sub-contractor was deprived of his right to an independent lien by the provisions of chapter 58 of the Acts of 1878–9.

THE PRESENT MECHANICS' LIEN LAW OF VIRGINIA.

The mechanics' lien law of our State is now contained in sections

2475–2484 inclusive, of the Code of 1887. The various sections having been amended as follows: Section 2475 by Acts 1895–6, p. 71; section 2476 by Acts 1895–6, pp. 71 and 903; section 2477 by Acts 1893–4, p. 523, and Acts 1895–6, p. 903; section 2479 by Acts 1893–4, p. 523; section 2481 by Acts 1889–90, p. 36, and Acts 1893–4, p. 576; and section 2484 by Acts 1893–4, p. 576; whilst sub-contractors, supply men, and laborers are protected against the general contractor's assignees and execution creditors by chapter 351 of the Acts of 1895–6.

An examination of the law shows:

First—The general contractor, sub-contractor, and material man are all provided for.

Second—The sub-contractor may either (1) perfect his own mechanics' lien, section 2477; or (2) he may have the general contractor's lien enure to his benefit, section 2482; or (3) he may render the owner personally liable to himself, section 2479; and (4) he is protected against the general contractor's assignees and execution creditors, Acts 1895–6, chapter 351.

The first question which seems naturally to arise in the consideration of the mechanics' lien law is, *Who* is entitled to a lien, and on *what* is the lien given? This is answered clearly and comprehensively by section 2475 of the Code, as amended by Acts 1895–6, p. 71: "All artizans, builders, mechanics, lumber dealers and other persons performing labor about or furnishing materials for the construction, repair or improvement of any building or structure permanently annexed to the freehold, and all persons performing any labor or furnishing materials for the construction of any railroad, whether they be general or sub-contractors, or laborers, shall have a lien, if perfected as hereinafter provided, upon such building or structure, and so much land therewith as shall be necessary for the convenient use and enjoyment of the premises, and upon such railroad and franchise . . . ; but where the claim is for repairs only, no lien shall attach to the property repaired unless the said repairs were ordered by the owner or his agent."

It would seem that this statute was broad enough to include an architect, whether he simply provided the plans and specifications, or, in addition to this, superintended the construction of the building, though this conclusion is not free from doubt. See 2 Jones on Liens, section 1367; *Stryker v. Cassidy*, 76 N. Y. 52; s. c. 32 Am. Rep. 262, and note 264.

It would frequently happen that a lien might be taken out either under section 2475 or section 2485. The claimant may proceed under

either, but cannot proceed under both. When he has perfected his lien under one section, he cannot abandon it and proceed under the other. He is confined to the section under which he first perfects his lien. See section 2485.

The term "general contractor," as used in the mechanics' lien law, is not necessarily one who contracts for the whole building, but includes all persons furnishing materials for, or doing work upon, a building, under a contract made by such person directly with the owner of the building, whether he contracted for the whole or for only a part of the work or material; a plumber, a plasterer, a carpenter, a bricklayer, a roofer and a material-man are all general contractors for the same building, if the contracts are all made with the owner. *Merchants & Mechanics Savings Bank v. Dashiell,* 25 Gratt. 616; *Boston & Co. v. C. & O. R. R. Co.*, 76 Va. 183.

RIGHTS OF ASSIGNEE.

Whilst, by section 2487, the assignee of a supply claim is given the same rights as the original claimant, there is no such provision as to the assignee of a mechanics' lien, and the fact that a statute was deemed necessary to give such right to the assignee in the one case, might be thought to imply the absence of any such right in the assignee of a mechanics' lien, but suits to enforce mechanics' liens have been maintained by assignees in two cases in this State—*Pairo v. Bethell, Assignee,* 75 Va. 825, and *Iaege v. Bossieux,* 15 Gratt., 83–99. In both of these cases the lien seems to have been perfected prior to assignment, but it would seem, from the reasoning of the court in the latter case, that the right of the assignee to perfect the lien would follow. At p. 98–9 the court said: "No case has been cited affirming that a contract under such a statute cannot be assigned. There is nothing in public policy or in the language or the policy of our act to forbid it, and if the statute be exclusively for the benefit of the builder and material-man, it would certainly impair the value of his lien to declare it non-assignable. It might prejudice him by depriving him of credit which he might otherwise obtain to prosecute his undertaking, and thus also operate a disadvantage to the owner . . . And it cannot be doubted that where the assignee takes the contract, he acquires with it the lien as a necessary incident." This conclusion is strengthened by the consideration that the incipient lien exists from the time the labor is done or the material furnished, which incipient lien must be perfected in the manner and within the time provided by statute. *Boston & Co. v. C.*

& O. R. R. Co., 76 Va. 180. No reason is perceived why this incipient lien should not pass to the assignee of the contract just as the perfected lien does.*

The lien is given upon "such building or structure and so much land therewith as shall be necessary for the convenient use and enjoyment of the premises, and (Acts 1895–6) upon such railroad and franchise."

The common law lien in favor of the workman upon the article into which his work has gone, has found a rational development by statute into the lien in favor of the workman on the house into which his work has gone, and, as the house would be useless without the support of the land on which it is built, the lien has been extended, not to other land of the owner, but only to "so much land therewith as may be necessary for the convenient use and enjoyment of the premises." The lien on the land arises purely out of the lien on the house, and if the lien on the house ceases, as, for instance, by the destruction of the house by fire, whilst the lien would still exist upon the brick, iron and other materials not destroyed by the fire, it would seem that, under our statute, as the land was no longer "necessary for the convenient use and enjoyment" of these remnants, when the destruction had been so complete as to leave them valuable only for material, the lien on the land would cease. The question has never arisen under our statute, and the decisions under the statutes of other States are conflicting. The conflict seems, however, to arise principally out of the difference in the provisions of the various statutes on this subject. See 2 Jones on Liens, sections 1538–1540, and cases cited in notes; Phillips on Mechanics' Liens, sections 12 and 42, Vol. 42, p. 319 of *Central Law Journal*, where the adjudged cases are cited and discussed.

In *Pairo v. Bethell, Assignee*, 75 Va. 382, it was held, in the absence of proof to the contrary, that a small lot in a town was necessary to the convenient use and enjoyment of the building put upon it.

The holder of a mechanics' lien has an insurable interest, which he may protect by taking out a policy in his own name, and it would seem on principle that even where the policy is obtained by and in the name of the owner of the property, on the destruction of the building, the money might take its place, and the lien-holder, on the prin-

*The correctness of the conclusion expressed herein has been demonstrated by the opinion of Keith, P., in *Bristol Iron & Steel Co. v. Thomas*, 25 S. E. Rep., p. 110, and it is now settled law in this State that wherever the assignor may take out a mechanics' lien, the assignee may take out the lien and prosecute a suit in equity to enforce it. Judge Keith's reasoning seems to be unanswerable, and the doctrine announced by him, it would seem, must prevail in all States where the question is still an open one.

ciple stated in *Wyman v. Wyman*, 22 N. Y. 253, might be subrogated to the same interest in the insurance money that he had in the building, which, by its destruction, has been converted into insurance money, but the weight of authority is all the other way. See 2 Jones on Liens, sec. 1541; Phillips on Mechanics' Liens, sec. 9, and cases there cited.

The material must be "furnished for the construction, repair or improvement" of *some building*. Therefore, if a material man sell lumber to a contractor on *general account* and not for use in *any particular building*, he has no lien on the buildings in which it may afterwards be used. 2 Jones on Liens, sec. 1325, &c.

Again: the lien is *specific* and exists upon such building or structure as the claimant has furnished material for, or performed labor upon; therefore, where materials are furnished under one contract for several buildings, and the prices paid for the different buildings are specified, there must be several liens on each building. The amount due for labor and material used in one house cannot constitute a lien upon another house in which it was not used. But if under one contract several buildings are to be erected, and an entire price is charged, there must be a joint lien on all the buildings for the whole amount. The lien must follow the contract. 2 Jones on Liens, sec. 1310–14; Id., secs. 1326 and 1337; *Sergeant v. Denby*, 87 Va. 206.

In *Boston & Co. v. C. & O. R. R. Co.*, 76 Va. 180, the court held that the claimants had no statutory lien against a railroad company, and that if railway companies were within the provisions of the mechanics' lien law, which question the court did not pass upon, in order to obtain the benefit of the lien against the railroad in its entirety, the required memorandum and account would have to be filed in the proper clerk's office of every county and corporation through which the road passed. Now, by the amendment of Acts 1895–6, p. 71, a lien is given upon such railroad and franchise, and by the same Act, which was itself amended at the same session of the legislature (see Acts 1895–6, p. 903), it is provided, that as to a railroad, the memorandum and account must be filed in the county or corporation in which the railroad or any part thereof is, or in the clerk's office of the Chancery Court of the city of Richmond, if the railroad is within the corporate limits of said city.

This latter clause may give rise to various questions. In order for it to apply, must the railroad be wholly in the city of Richmond, or is it sufficient that any part of it be within that city? Why make a pro-

vision as to the counties and cities other than Richmond for taking out a lien where only a part of the railroad is, whilst the provision as to Richmond only covers the case where the "railroad is within the corporate limits of said city."

If the lien may be taken out in Richmond where a part of the railroad is within its limits, is this exclusive, or merely concurrent? May the lien still be taken out in any county or corporation through which the road passes?

The provision in reference to the city of Richmond may have been, and probably was, inserted merely for the purpose of requiring the lien, when a part of the road was in the city of Richmond, to be taken out in the clerk's office of the Chancery Court of Richmond, instead of in the clerk's office of the Corporation Court of Richmond; but as the lien may be taken out in any county or corporation in which any part of the railroad is, without regard to where the work was done, it would seem to be the part of prudence, where the railroad extends beyond the limits of the city of Richmond, to take out the lien in some county, or some city other than Ricmond, through which the road passes.

The amendment of 1895–6, p. 903, provides that a memorandum must be filed "*in the clerk's office of the county or corporation* in which any building, structure or railroad, or any part thereof, is," instead of, as sec. 2476 provided, "*In the clerk's office of the county or corporation court* of each county and corporation," &c. There can be no doubt that the expression used in the amendment is an inadvertence, and that the lien must be recorded just where it would have been proper to record it, had the language of sec. 2476 been repeated.

A similar error occurred in the amendment of 1889–90, in reference to the recordation of a *lis pendens,* and in the case of *Davis v. Bonney,* 86 Va. 755, where the amendment was construed, the court, speaking by Lewis, P., said, at p. 758:

"The amendatory Act says the memorandum shall be left with 'the clerk of the county or corporation.' But this was an inadvertence, as there is no such officer known to our law. It was evidently the intention of the legislature not to alter, but to re-enact, the provision of the Code in this particular, and we must therefore, according to a well-settled rule of construction, to avoid an absurdity, give effect to that intention. In other words, the Act must be construed to mean as the Code provides, that the memorandum shall be left with the clerk *of the*

court of the county or corporation. *Holy Trinity Church v. United States*, 143 U. S. 457; *Bolling v. Bolling*, 88 Va. 524."

The same reasoning would unquestionably apply to the statute under consideration, and the lien must be recorded in the clerk's office of the county or corporation court of the county or corporation in which the building, or structure, or any part thereof, is.

Where the property on which the lien is sought lies within the jurisdiction of a corporation court, or of the chancery court of the city of Richmond, but outside the city limits, the lien must be recorded in the clerk's office of the county court of the county. It cannot be recorded in the city. *Boston & Co. v. C. & O. R. R. Co.*, 76 Va. 185.

From considerations of public policy liens frequently cannot be taken out on property which would fairly come within the class covered by the terms of the statute, the general rule being that a mechanics' lien can be taken out on no property, the sale of which would be against public policy. With reference to sub-contractors and materialmen, under our statute, which fastens no additional liability on the owner, but regards him as a stake-holder, and merely undertakes to apply the fund in his hands to the payment of those who actually do the work and furnish the material which has produced the fund, there is no apparent reason why, even when it is against public policy to permit a sale of the building or structure, if the owner admits funds in his hands, there should not be a personal decree against him, just as there was in *Taylor v. Netherwood*, 91 Va. 88.

On the subject of exemptions from public policy, see 2 Jones on Liens, sections 1375–1381; Phillips on Mechanics' Liens, pp. 179–183.

On sub-contractors' rights, see Phillips, section 179 a; *Frank v. Chosen Freeholders*, 39 N. J. L. 347; *Whiting v. Story Co.* (Iowa), 37 Am. Rep. 189; *Loving v. Small* (Iowa), 32 Am. Rep. 136; *Leonard v. City Brooklyn*, 27 Am. Rep. 80; and valuable note to *La Crosse &c. R. R. Co. v. Vanderpool*, 78 Am. Dec. 696–7.

If the owner does not make this defence, the general contractor cannot; Phillips, p. 315, citing *Loonie v. Burt*, 80 Texas, 582.

Churches are not exempt from a mechanics' lien on grounds of public policy. Note to *La Crosse R. R. Co. v. Vanderpool*, 78 Am. Dec. 696. In *Trustees of Franklin Street Church v. Davis*, 85 Va. 193, the question was not considered, but it was held that the lien had been lost for other reasons.

It would scarcely seem necessary to declare, as the latter clause of section 2475 does, that where the lien is for repairs only, no lien shall

attach to the property repaired, unless the said repairs were ordered by the owner or his agent; since this would seem to be the law independently of this provision. It is not believed that by either building or repairing, a man can be improved out of his property without his consent.

HOW LIEN PERFECTED.

Having seen *who* may take out a lien, and on *what*, let us see *how* it must be done.

The amendment of section 2476 in the Acts of 1895–6, p. 903, provides the remedy for the general contractor, whilst the amendment of section 2477, made at the same time, provides the remedy for the subcontractor.

Of the general contractor's remedy we remark:

(1) The lien must be perfected after the work has been done and the materials furnished, and before the expiration of sixty days from the time such building or structure is completed or the work thereon otherwise terminated, and from the time such labor is last performed or materials furnished for the construction of any building, structure or railroad.

(2) The account, statement and description must be filed in the clerk's office of the county or corporation court of the county or corporation in which the building or structure or any part thereof is, or in the clerk's office of the Chancery Court of the city of Richmond, if the building or structure is within the corporate limits of said city.

(3) The instrument filed must embrace:

- 1a. An account showing:
  - 1b. The amount and character of the work done or material furnished.
  - 2b. The prices charged therefor.
  - 3b. The payments made, if any.
  - 4b. The balance due.
- 2a. An affidavit of the claimant or his agent verifying the account.
- 3a. A statement attached by the claimant declaring his intention to claim the benefit of his lien.
- 4a. A brief description of the property on which he claims the lien.

It should be carefully noted that the effect of this provision is to require the general contractor to see that his lien is filed within sixty

days from the time his work is done or his material furnished, as well as within sixty days from the completion of the building; so, remembering that there may be any number of general contractors about one building, though the general contractor take out his lien in sixty days from the completion of the building, yet, if his job had been completed before the rest of the building, he may find that he failed to take out the lien within the sixty days from the completion of his work on the building, and that he has consequently lost his lien. This same provision applies to the sub-contractor when he undertakes to perfect his lien, though it does not, when he seeks to render the owner personally liable; the time then runs from the time the building is completed or the work thereon otherwise terminated.

It should be further noted that the lien must no more be taken out too soon, than deferred too late. Impatience and delay are equally dangerous. If taken out too soon, the lien is void, and in *Moore v. Rolin*, 89 Va. 107, where the sub-contractor, before completing his contract, perfected his lien, and was sued by the general contractor for damages, the court held that he was liable for the injury done the contractor. That a statement of lien filed prematurely creates no lien, see 2 Jones on Liens, section 1430.

The period within which the lien must be perfected has been at different periods ninety, sixty, thirty, and is now again sixty, days from the time "the building is completed or the work thereon otherwise terminated."

In the case of the *Merchants & Mechanics Savings Bank of Norfolk v. Dashiell*, 25 Gratt. 616, the court held that the fact that the work was not completed through the default of the owner did not prevent the contractor's obtaining his lien, though the statute then contained no provision for the filing, except that it must be done (Code 1873, p. 619) "within thirty days after the completion of the work." Christian, J., at pages 625–6, concludes that in such a case the lien need not be filed at all, on the ground that the law gives a lien from the time the work is commenced; that during the progress of the work, its unfinished condition is sufficient notice of the lien, and it is only where the work is completed, that the statute requires the filing of the memorandum and affidavit under penalty of losing the lien created by the commencement of the work. Staples, J., declined to commit himself to this proposition, on the ground that he had not examined that question, and Moncure, P., dissented.

The statute does not undertake to say how much work shall be done

or material furnished during the sixty days reserved for the taking out of the lien. The building may have been substantially done for more than sixty days, but if the finishing touches have been put on in that time, it is sufficient, provided that the work done within the sixty days was done in good faith for the purpose of completing the contract, and not for the purpose of extending the time during which the lien might be taken out. See Jones on Liens, secs. 1427 and 1444; *Nichols v. Culver*, 51 Conn. 177; *McCarthy v. Groffet*, 51 N. W. Rep. 281; *Bruce v. Berg*, 8 Mo. App. 204; 15 Am. & Eng. Encyc. Law, 149, and cases there cited.

In the case of the *Trustees of the Franklin Street Church v. Davis*, 85 Va. 196, the lien was filed November 5th, 1885; the claimant testified that the work was substantially completed in the first days of November, 1884; that he did no work on the building from November, 1884, till August, 1885; that he had returned and put on the "finishing touches" August 20th, 1885, and contended that the time for perfecting the lien, ninety days at that time, ran from the latter date. The "finishing touches" were topping off the chimneys and penciling the brick work. The court held that the time ran from the substantial completion of the building, and not from the putting on of the finishing touches, but for the reason, that the parties by their dealings and agreement had fixed the earlier period as the time of the completion of the building, the court saying at page 196: "It was competent for the parties to agree that the work should be considered as completed before what may be called the 'finishing touches' were actually put upon it; and in view of the agreement between them, of which the collection of the second payment and the charge and receipt of interest is evidence, the complainant was entitled to file his lien in the office on the first day of November." It would seem that the parties by their agreement had changed the time for the running of the lien, from the putting on of the "finishing touches," the time from which it would have otherwise run, by the receipt of the second payment, in November, 1884, which was to be made when the building was completed, and by the calculation of interest from that date.

In *Richlands Flint Glass Co. v. Hiltebeitel*, 22 S. E. Rep. 806, the last charge on the bill was for work for the month of October and the lien was taken out on November 8th. It was held that it sufficiently appeared that the lien was taken out within the thirty days required by the statute.

For cases where the lien was filed too late, see *Boston & Co. v. C. &*

O. R. R. Co. and Others, 76 Va. 180; *Harrison & Brothers v. Homeopathic Association*, 19 Am. State Reports, 714.

All the statutory provisions for a mechanics' lien are indispensable and the omission of any one of them is fatal. See *Trustees Franklin Street Church v. Davis*, 85 Va. 193; *Shackelford v. Beck*, 80 Va. 573; *Davis v. Alwood*, 94 U. S. 545; *S. V. R. R. Co. v. Miller*, 80 Va. 821.

In *Shackelford v. Beck*, 80 Va. 573, the account consisted of the words (p. 574): "To balance of account rendered, for work and labor done, and material furnished, for your house." The court held that it was fatally defective; that the recordation thereof constituted no notice, and that even though the purchaser of the property had actual notice of a correct, itemized account, the recordation of this memorandum constituted no lien. It may be well doubted whether such a conclusion would be now reached were the question to again arise. In reference to that case, we note:

1st. That it arose under chapter 115 of the Code of 1873, which contains no provision corresponding to section 2478 of the Code of 1887, which provides that, "No inaccuracy in the account filed, or in the description of the property to be covered by the lien, shall invalidate the lien, if the property can be reasonably identified by the description given, and the account conform substantially to the provisions of the two preceding sections and is not wilfully false."

2d. From the opinion of the court in that case, delivered by Fauntleroy, J., Lewis, P., and Hinton, J., dissented.

In the case of *Taylor v. Netherwood*, in a most carefully considered and convincing opinion, 91 Va. 88, 93, the court held that, "where the work is contracted for as an entirety for a specific amount, and this is so set out in the account filed, all the information is given that is needed, or can reasonably be required." The correctness of this conclusion is irresistibly shown by the reasoning of the court, as well as by the authority of a large number of adjudged cases cited (pages 93–4).

In *Rison, Trustee, and Others v. Moon*, 91 Va. 384, though the statute in force when the lien was taken out, January 31, 1887, provided that "a true account" should be filed instead of simply "an account" as in the present statute, the court held that where a credit for machinery purchased by the debtor, as well as some other credits known to the debtor, were omitted, the lien was not invalidated thereby, because (page 394), "It does not appear in the record that Bateman

knew at the filling of this account just what the credits were, or the amounts thereof, that Rison was entitled to. Hence it would seem that the account made out and filed by him was as true an account as he could under the circumstances have made. . . . . . .'' See, also, *Richlands Flint Glass Co. v. Hiltebeitel*, 22 S. E. R. p. 806.

As to the description of the property, it is sufficient ''if the property can be reasonably identified by the description given.'' *Taylor and Others v. Netherwood*, 91 Va. 91; *Richlands Flint Glass Co. v. Hiltebeitel*, 22 S. E. Rep. 806; 2 Jones on Liens, sec. 1421; Code, sec. 2478.

The memorandum prescribed by the statute having been filed with the clerk, it is made the duty of that official (sec. 2476) ''to record the same in a book to be kept by him for that purpose, called the 'Mechanics' Lien Record,' and to index the same in the name as well of the claimant of the lien as of the owner of the property, and from the time of such filing all persons shall be deemed to have notice thereof.''

It is well to note that the mechanics' lien must be recorded in ''a book kept by the clerk for that purpose,'' whilst a supply lien, under section 2485, must be recorded in the deed-book. No good reason is perceived for this distinction, and there is no apparent reason why the law should not require that memoranda for mechanics and supply liens be recorded in the same book, to be called ''Supply and Mechanics' Lien Record.''

If the sub-contractor wishes to take out his independent lien, he may do so by doing just what the general contractor is required to do, and in addition (sec. 2477, amended by Acts 1895–6, page 903) give notice in writing to the owner of the property or his agent of the amount and character of his claim. But the amount secured by his lien shall not exceed the amount in which the owner is indebted to the general contractor at the time the notice is given, or shall thereafter become indebted to said general contractor upon his contract with said general contractor for the said structure, building or railroad.

Under section 2477 of the Code, the sub-contractor could reach only the amount in which the owner was indebted to the general contractor at the time the notice was given. Under the section, as amended by Acts 1895–6, p. 903, the sub-contractor's lien is extended to all amounts in which the owner ''*shall thereafter become indebted* to said general contractor upon his contract with said general contractor for said structure or building or railroad.''

If the sub-contractor be satisfied with the personal liability of the owner, he may render him personally liable, in the manner provided in section 2479, amended by Acts 1893–4, p. 532, subject to the standing of the account between the owner and the general contractor.

In order to fix this personal liability on the owner, the sub-contractor must do two things:

First—He must give notice in writing to the owner or his agent, stating the nature and character of his contract and the probable amount of his claim; and,

Second—After the work done or material furnished by him, and before the expiration of thirty days from the time such building or structure is completed, or the work thereon otherwise terminated, he must furnish both to the owner of the building, or his agent, and also to the general contractor, a correct account of his claim against the general contractor for the work done or material furnished and the amount due, which account must be verified by affidavit.

If these requirements are complied with, the owner becomes personally liable for the amount due from the general contractor to the sub-contractor, provided that amount does not exceed the sum the owner owes the general contractor at the time the notice is given, or afterwards owes him by virtue of his contract.

Of this section, we remark:

(1) The preliminary notice need no longer be given "before performing work or furnishing materials to a general contractor," those words in section 2479 having been stricken out in the amendment, Acts 1893–4, p. 523.

(2) The preliminary notice may be given:

1a. Before the work is done or the material furnished.

2a. Whilst the work is being done or the material is being furnished.

3a. Under the decisions in *Roanoke L. & I. Co. v. Karn & Hickson*, 80 Va. 596 and *S. V. R. R. Co. v. Miller*, Id. 821, and *N. & W. R. R. Co. v. Howison*, 81 Va. 125, which were rendered after the amendment of 1874–5 had stricken out the words, in section 5, chapter 115, of the Code of 1873, "*probable*" value of the labor "*to be*" performed and the material "*to be*" furnished, it was held that the preliminary notice might be given after the work had been performed and the material furnished, but as

provision is made in our present statute for notice of the "probable amount" of the claim, it appears that the statute now contemplates notice before the completion of the work or the furnishing of the material, since the amount of the claim, after the completion of the work, would no longer be a *probable* amount, but it is by no means certain that a notice that found the owner with funds in his hands due the general contractor would be held bad, because it came *after* the completion of the work or the furnishing of the material.

(3) The notice must be in writing.

(4) It must be given to the owner or to his agent.

(5) The notice must state:

1a. The nature and character of the contract, and

2a. The probable amount of the claim.

(6) The second paper required to fix the owner's liability is:

1a. A correct account of the sub-contractor's claim against the general contractor for the work done or material furnished, showing the amount due.

2a. It must be verified by affidavit.

(7) This account and affidavit must be furnished:

1a. To the owner of the building or his agent,

2a. To the general contractor.

(8) This account and affidavit may be given at any time between the finishing of the sub-contractor's work, or the furnishing of his material, and thirty days after the completion of the building. It is not necessary that the sub-contractor wait till the building is completed. *N. & W. R. R. Co. v. Howison*, 81 Va. 125; *Roanoke L. & I. Co. v. Karn & Hickson*, 80 Va. 596; *S. V. R. R. Co. v. Miller*, Id. 821.

The sub-contractor is given a third remedy, dependent on the action of the general contractor in taking out a lien, by section 2482, which provides that, when the general contractor has perfected his lien, the sub-contractor may obtain the benefit thereof to the extent of his debt by giving written notice of his claim against the general contractor, to the owner or his agent, before the amount of his lien is paid off or discharged.

Section 2480 gives a simple and satisfactory method of settling disputed accounts between the general contractor and sub-contractor, when a personal liability in favor of the latter has been fastened on the

owner under the provisions of section 2479, and affords full protection to the owner.

Section 2483 in its practical application gives rise to some problems exceedingly difficult of solution, not because of the terms of the statute, but because of the subject with which it undertakes to deal.

It first deals with the case of a person having less than a fee simple estate in the land on which is situated the building or structure erected or repaired, and provides that only his interest therein shall be subject to the mechanics' lien.

In the matter of conflicting liens on the property, the statute provides for the following cases:

First—Where the lien was created on the land before the work was begun, or the materials were furnished, it shall be the first lien on the land and the second lien on the building or structure, and when the property is sold, the lien or encumbrance created first, shall be preferred in the distribution of the proceeds of sale only to the extent of the estimated value of the land at the time of the sale, exclusive of the value of the building or structure. In other words, the first lienor has the prior lien on so much of the purchase money, as corresponds to the estimated value of the land at the time of the sale, without the building, whilst the claimant under the mechanics' lien law has the first lien upon the remainder of the purchase money.

Where the lien or encumbrance on the land was created after the work was commenced or the materials furnished, the lien in favor of the person performing the work or furnishing the material is prior both as to the land and the building.

These principles seem just, and clearly stated by the statute, but their practical application is sometimes difficult. A lends $10,000 on a hotel worth $20,000, and takes a deed of trust on it to secure his debt. B then erects an addition to the hotel. C, whilst B is at work on the addition, makes a loan of $7,000, and takes a deed of trust on the whole property. B, not having been paid for his addition, perfects his mechanics' lien for $5,000, after the execution and recordation of the second deed of trust. The property has depreciated in value, so that even after the addition has been completed, it is only worth $10,000, and can only be sold as a whole. Applying the law as laid down in section 2483, it will be seen that A will be preferred in the distribution of the proceeds of sale to the extent of the estimated value of the land and the original building. B will be preferred to the extent of the remainder of the purchase money, and would take

any surplus remaining from the land and original building after paying A, while C is postponed as to both funds till A and B have been paid in full; but the fixing of the amount of the purchase money corresponding to the values of the land and original building and of the addition, respectively, when the improved property is worth less than the property was before the improvement was made, raises questions difficult of solution.

Iaege v. Bossieux, 15 Gratt. 83, was decided before the mechanics' lien statute had undertaken to deal with the question of priorities. There a building fund company agreed to advance to one of its members money to build a house on his lot; a lien was taken upon the lot and buildings to be erected upon it, to secure the advances made and to be made. The mechanics' lien was then recorded, and subsequently the balance of the loan was paid to an assignee of the mechanic, with the knowledge on his part that it came from the company, and that the building fund company claimed priority for its lien on the property. The court held that the company was entitled to priority over the mechanics' lien for the advances made after the lien was recorded, as well as for those made before. It would seem that under the peculiar circumstances of that case, the same result would follow now, as the deed of trust went to record before the work was begun, and the money paid out after the work was begun, was secured in it and was paid by the deed of trust creditor directly to the claimant, who received it knowing that the deed of trust creditor asserted a priority over him.*

*Section 2483 has been recently construed by the court, and the method of applying its provisions has been clearly shown.

In *Fidelity L. & T. Co. v. Dennis*, 2 Va. Law Reg. 438, the mechanics' lien was recorded on property upon which there was a deed of trust recorded before work began on the buildings placed thereon. The court held that the deed of trust creditor was entitled to priority of satisfaction to the extent of the *etstimaed* value of the property, without the improvements for which the lien was claimed; that this value might be estimated and fixed by the court itself on evidence submitted directly to it, or through the finding of a commissioner, subject to review by the court. This value, however, must be fixed *before* the sale, and it must be the estimated value as of the time of the sale.

There was no contest as to the value thus fixed, but the mechanics' lien creditor contended that the proceeds of sale should be divided between the deed of trust creditor and himself in the ratio of the estimated value of the land at the time of the sale to the estimated value of the land and the buildings.

The court overruled this contention, and held that the scheme of distribution fixed by statute was a *preference*, not a *ratio*. The deed of trust creditor was preferred in the distribution of the proceeds of sale to the extent of the estimated value of the land at the time of the sale, and the mechanics' lien claimant, so far as was necessary for the payment of his debt, was preferred as to the residue.

PROCEEDINGS TO ENFORCE MECHANICS' LIENS.

Section 2484, amended by Acts 1893–4, p. 576, provides—

1st. That the liens we have been considering may be enforced in a court of equity.

2d. When a suit is brought to enforce the lien all parties claiming a lien on the property, or on any part thereof, may come in by petition with the same effect as though each petitioner had brought an independent suit.

3d. There shall be no priority between the claimants, except that the lien of a sub-contractor shall be preferred to that of the general contractor.

Section 2481, amended by Acts 1893–4, p. 576, provides that the suit to enforce the lien must be brought within six months *from the time when the whole amount covered by such lien has become payable,* and that the filing of a petition shall be regarded as the institution of a suit. This latter provision would seem to be made sufficiently clear by section 2484.

When a court of equity has obtained jurisdiction of the subject-matter, by virtue of the statute giving jurisdiction in mechanics' lien cases, it goes on to adjust the rights of all the parties; to allow compensation for defects; to determine priorities of liens; to give relief in cases of part performance, and to grant complete relief, going even further than it was authorized to do by the comprehensive provisions of the original act of 1842–3. See *Iaege v. Bossieux,* 15 Gratt. 84; *Bailey Construction Co. v. Purcell,* 88 Va. 300; *Rison, Trustee, v. Moon,* 91 Va. 384.

For various questions arising in the enforcement of liens, and the fixing of owners' personal liability, see the authorities last cited, and *Taylor v. Netherwood,* 91 Va. 88, where the bill was filed by the sub-contractor to enforce his lien against the real estate of the owner. The account was established and the owner admitted in his hands funds sufficient to pay it, and his readiness to pay it; and the court held that under these circumstances it would be a vain and useless act to subject the property to the payment of the lien, and that it was not error to give a personal decree against the owner and general contractor for the amount due.

Kirn v. Champion Iron Fence Co., 86 Va. 608, and *N. & W. R. R. Co. v. Howison,* 81 Va. 125, were both actions *in assumpsit* to en-

force personal liability of owner, and rules were laid down as to what must be, and what need not be, averred and proved by the claimants.

The first case was decided by a court of three judges, Lewis, P., and Hinton, J., being absent. Of the three judges who sat in the case, Richardson, J., dissented from the opinion of the court sustaining a demurrer to the declaration, because the performance of the contract in the time agreed on between the general contractor and the sub-contractor was not averred and proved.

The latter case held that it need not be alleged or proved in a suit by sub-contractor that the account was approved by the general contractor, or that, after ten days' notice, he had failed to object to it, or that the same had been ascertained to be due to the sub-contractor according to section 6, chapter 115, of Code of 1873. All these are matters of defense, and constitute no part of plaintiff's statement of his case.

In *Pairo v. Bethell, Assignee,* 75 Va. 825, the court held that in a suit to enforce a mechanics' lien real property of value should be sold on a reasonable credit, unless peculiar circumstances took it out of the rule, and these circumstances should appear on the record.

Lester v. Pedigo, 84 Va. 309, held that a sale for cash enough to pay the amount of the lien was proper, when that amount was but a small proportion of the whole value of the property.

There is no requirement that property shall be rented out to pay off a mechanics' lien, and it would seem in all cases where the claimant has established his lien that he is entitled to a sale, but in *Rison v. Moon,* 91 Va. 393, a decree for renting was affirmed. The appeal, however, was by the owner, and the contractor does not seem to have insisted on his right to a sale.

HOW A MECHANICS' LIEN MAY BE WAIVED OR LOST.

When the claimant undertakes to enforce his mechanics' lien he may find that he has lost it in any one of a variety of ways. See Code, section 2481, amended Acts 1893–4, p. 576; 2 Jones on Liens, chapter 38; Phillips on Mechanics' Liens, chapter 272.

Amongst the most common methods by which the mechanic loses his lien is—

1. By not bringing suit within six months after the whole of the amount covered by the lien has become payable.
2. By agreement.
3. By estoppel.

4. By the contractor's abandoning the contract.
5. By taking security.
6. By destruction of the building.

The question as to whether a mechanics' lien is waived by taking additional security is frequently an interesting one. It would seem that in this State, following the analogy of the decisions in reference to the release of vendors' liens and other securities, the question of the waiver or release of the lien is dependent upon the intention of the parties, as gathered from all the circumstances surrounding the transaction. Taking a personal judgment against the person liable for the debt secured by the lien, does not operate as a release or merger of the lien, any more than the taking of a personal judgment on a debt secured by a vendor's lien, or a deed of trust. The remedies upon the debt and security are distinct and concurrent, and either or both may be pursued. 2 Jones on Liens, sec. 1622, and cases cited.

Taking the debtor's negotiable note, the maturity of which does not extend beyond the time within which a lien may be asserted, in the absence of an express agreement to that effect, does not amount to the waiver of the right of lien, but a negotiable note must be produced at the trial, or the debtor secured against its subsequent production, or the lien cannot be enforced. 2 Jones on Liens, sec. 1532–1537, and cases cited; *Steamboat Charlotte v. Hammond*, 43 Am. Dec. 536; *Bailey v. Hull*, 78 Am. Dec. 706; *McMurray v. Taylor*, 77 Am. Dec. 612; Phillips on Mechanics' Liens, secs. 276–8.

If, however, the note extends the credit beyond the six months fixed by statute for the institution of the suit to enforce the lien, no suit can be brought till the note is due; and, as the limitation fixed by the mechanics' lien statute then applies, the taking of the note maturing more than six months after the time that the whole amount covered by the lien has become payable would operate as a virtual waiver of the lien. 2 Jones on Liens, secs. 1535–6; *Iaege v. Bossieux*, 15 Gratt. 93; *Trustees Franklin Street Church v. Davis*, 85 Va. 197.

In such cases it would frequently become an interesting question to determine when "the whole amount covered by such lien has become payable." This would generally appear from the lien itself, and it is certainly eminently wise and just that creditors and purchasers from the owner who, by an examination of the recorded lien, found themselves protected against suits by the expiration of the six months fixed by statute, should not be put in peril by the owner's giving evidences of debt extending the statutory period for the suit.

In the case of *Iaege v. Bossieux* (*supra*) the suit was brought under a statute providing that the lien shall not be in force more than six months from the time when the money, or the last installment of the money to be paid under the contract, shall become payable, unless a suit in equity to enforce the lien shall have been commenced within the said six months, and the court held that the suit might be brought after the first installment had fallen due, without waiting for the remaining installments to become due, and sale decreed for the payment of all the installments that had fallen due up to the time of the decree, with leave to the claimant to obtain satisfaction out of the surplus, if any there might be, for the installments not due at the time of the decree. The credit to be extended appeared on the face of the recorded contract (p. 85), and the court commented on, without disapproving, the case of *Pryor v. White*, 16 B. Mon. Rep. 605, in which it appeared that under the Kentucky statute the lien was to be enforced by bill filed within one year from the completion of the work, and that the party had taken notes, some of which would not fall due until after the year, and it was held that the claimant had, by his voluntary act, placed himself in a position which rendered him unable to bring a suit to enforce his lien as to them within the year, and he was regarded as having virtually waived it. Another interesting case, considered by the court in *Iaege v. Bossieux*, is *Jones v. Alexander*, 10 Smedes & Marsh R. 627, which arose under the Mississippi statute, which required the suit to be brought within twelve months after the money was to be paid, in order to secure the lien. The proper time for payment was January 1, 1845. In May, 1845, the claimant had taken the debtor's note, payable one day after date, and filed his petition in April, 1846, more than twelve months after the original time of payment, but within twelve months of the time for payment fixed by the note. It was held that the parties could not thus extend the time for bringing suit as fixed by the statute, and that the suit not having been brought within the twelve months fixed by the statute, it could not be maintained.

McClallan v. Smith, 11 Cush. R. 238, is a similar case to the same effect.

In *Trustees of Franklin Street Church v. Davis*, 85 Va. 197, the court held that the claimant had lost his lien by failing to perfect it within the ninety days allowed by the statute, and, moreover, since none of the installments were due, that the suit had been prematurely brought, distinguishing the case from *Iaege v. Bossieux*, where some of

the installments were due, but others were not. In view of the decisions cited, we think there can be no doubt that taking a note maturing more than six months after the whole amount covered by the lien had become payable, would operate in Virginia as a waiver of the lien.

Where collateral security is taken for the debt for which a mechanics' lien may be taken out, the question of a waiver or release depends upon the intention of the parties, and it is believed that in this State there is no waiver, unless the intention of the party entitled to waive it be clearly shown : 2 Jones on Liens, sections 1519–20; 15 Am. & Eng. Encyc. Law. It will be noted of the authorities cited, in Jones on Liens and the Encyclopedia, in support of the doctrine of waiver by taking security, that many of them construe statutes which provide specifically, as is notably the case with the Iowa statute, that the taking of security shall operate as a waiver of the lien. See *Allis v. Meadow Distilling Co.*, 29 N. W. Rep. 543; *McKeen v. Haseltine,* 49 N. W. Rep. 195.

That in this State a creditor entitled to one security does not waive it, unless the intention to waive it be clearly shown, seems to be well established.

In *Coles v. Withers,* 33 Gratt. 186, C sold land to M for $3,564, for which she took M's bond and reserved a vendor's lien to secure it. C then had other transactions with M, and M became indebted to C in the sum of $10,630.50, inclusive of the former debt. For this last-mentioned debt M executed his bond with two personal sureties, and the bond for $3,564 was surrendered. M then died, having devised his property to his widow, L, who married W. The balance due on the larger bond was $4,123, and W confessed judgment for this amount. W sold the land, on which the lien for $3,564 was reserved to H, who denied all knowledge of the lien till long after the purchase. C denied all intention of releasing the land from the lien, and no such intention appeared affirmatively. It was held that the question of release of the lien is one of intention on the part of the person entitled to the lien, to be determined by the circumstances of each case, and, there being nothing in the case to show such intention, the lien still existed.

For further illustrations of the doctrine, see *Smith v. Blackwell,* 31 Gratt. 291; *Morriss v. Harvey & Williams,* 75 Va. 726; *Brockenbrough v. Brockenbrough,* 31 Gratt. 580.

It only remains to notice the provisions of Chapter 351 of the Acts of 1895–6. Section 1 provides that no assignment of a debt or any part thereof, due or to become due to a general contractor, for the

construction, erection or repairing of any building, structure or railroad, shall be valid or enforceable by the assignee, until the claims of all sub-contractors, supply men and laborers against the general contractor, for labor performed, or materials furnished, in and about the construction, erection and repairing of such building, structure or railroad, shall have been satisfied, unless the sub-contractors, supplymen and laborers give their consent in writing to the assignment, and if the owner, without such written assent, make payment to such assignee, such payments afford the owner no protection against sub-contractors, supplymen and laborers who have not been paid for work done or material furnished about the building, structure or railroad for which the payment is made.

Section 2 provides that the debt due the general contractor from the owner cannot be subjected by any creditor of the general contractor, whose debt arose in any other manner than in the construction, repairing or erection of such building, structure or railroad for such owner, until all the sub-contractors, supplymen and laborers shall have been paid for their labor performed and material furnished, in and about the construction, erection or repairing of such building, structure or railroad.

It will be noticed of this statute that the owner must exercise much more care in dealing with an assignee than with the contractor. He is safe in making payments to the general contractor, so long as he has no written notice of the debt due the sub-contractor, whilst if he pays the assignee, the owner must see at his peril that all sub-contractors, laborers, and supplymen are paid, or that they give their written assent to the assignment, though he may have no possible means of ascertaining who they all are. Such a provision renders it practically impossible for an owner to safely pay an assignee at all, without suit, and as an assignment is not valid until all sub-contractors, supplymen, and laborers have been paid in full, it would seem that an unknown workman or material-man, not being before the court, would not be bound by the judgment of the court rendered on an assignment, which the statute declares, as to him, shall not be valid or enforceable, and consequently that the owner would not be protected against such workman or material-man even by the judgment of the court.

When we reflect that the right of the sub-contractor, &c., to come against the owner for payments made the assignee of the general contractor has no limit fixed on it by the mechanics' lien law, and that the owner's liability would only be barred by the statute of

limitations, which would in the first instance be three years, and by the contractor's giving a note might be extended to five years, and by a bond to ten years, and when to this consideration is added the reflection that by collusion between the general contractor and his sub-contractors, laborers, and supplymen a door is opened wide for frauds on the general contractor's other creditors, whilst the sub-contractor was already fully protected by his own right to a lien, by his subrogation to the general contractor's lien, and by his right to render the owner personally liable to him, by giving notice before or during the progress of the work, it may be well doubted whether our mechanics' lien law, in the main fair and just, has not been sadly marred by the engrafting upon it of these provisions, at once onerous and oppressive to the owner, and abounding in opportunities for fraud on the general contractor's creditors.

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